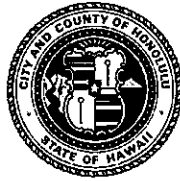


**OFFICE OF THE MAYOR
CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL
MAYOR

ROY K. AMEMIYA, JR.
MANAGING DIRECTOR

GEORGETTE T. DEEMER
DEPUTY MANAGING DIRECTOR

May 26, 2017

The Honorable Ron Menor
Chair and Presiding Officer
and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

Dear Chair Menor and Councilmembers:

SUBJECT: Veto of Bill 23 (2017) – Relating to City Parks and
Recreation Facilities

Bill 23 (2017) prohibits the City administration from transferring the assignment of Thomas Square to the Department of Enterprise Services (DES). The Bill is unsigned by the Department of the Corporation Counsel as to form and legality because it violates the separation of powers doctrine, Sections 4-201 and 4-202 of the Revised Charter of the City and County of Honolulu 1973 (2000 ed.) as amended. The Bill also proposes to disrupt the balance of power between the two coordinate branches of government, the City Council and the Executive Branch.

Separation of powers. This is one of the fundamental principles of our government. A goal of the 1971 Charter Commission was to establish through amendment a "strong mayor-strong council" form of government, co-equal in importance but different in function. They intended for the Council to be responsible for broad policy making, and for the Executive Branch to be responsible for the implementation and execution of policy.

In this case, the Charter vests the power to assign City property to DES for cultural and entertainment facilities and activities exclusively in the Executive Branch and the Mayor. Bill 23 violates the separation of powers doctrine and interferes with the Executive Branch's ability to perform its Charter function.

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Concern over commercial activity. Through testimony and discussion, we recognize the Council's concern that a transfer to DES would commercialize Thomas Square. This will not be the case. Thomas Square was dedicated to the City from the State through Executive Order No. 3783. The Executive Order states clearly that Thomas Square must be maintained as a public park pursuant to Section 46-65.6, Hawaii Revised Statutes. Additionally, the Executive Order places management of Thomas Square with the City and County of Honolulu and is not department specific.

DES Director Guy Kaulukukui inquired with the State Board of Land and Natural Resources on whether the board would need to approve a transfer of Thomas Square from the Department of Parks and Recreation (DPR) to DES. In a letter dated January 26, 2017, from Chairperson Suzanne D. Case to Director Kaulukukui, the Chairperson stated that the proposed uses of Thomas Square are not inconsistent with the Executive Order, and that they did not plan to place the issue on any forthcoming Board agenda.

Therefore, it is my administration's intent that Thomas Square remain a public park, open to the public, with many if not all of the same programmed activities which have operated at Thomas Square for decades. This includes activities such as plant sales, dog shows, arts and crafts sales, cultural events, and more. DES is responsible for administering the vendor agreements for the food and gift shop concessions at other public parks throughout Oahu, such as Ala Moana Beach Park and Hanauma Bay. DES may consider similar concessions at Thomas Square, but it is important to note that DES will not permit any kind of activity that is inconsistent with the public park purpose of Thomas Square.

Improved maintenance and security. The main reason for transferring the responsibility for Thomas Square from DPR to DES is the fact that Thomas Square will be maintained by a dedicated crew and monitored more closely for security violations. Within DPR's current budget and staffing, Thomas Square is maintained as best as possible, but by a roving crew. Due to its proximity to the Neal S. Blaisdell Center, the DES maintenance and security teams can include Thomas Square in their area of responsibility on a daily basis.

While improved since the start of the City's renovation project at Thomas Square, the park has been the scene of crime and vandalism; residents do not feel safe entering the park, especially at night. The sidewalks around the park have been occupied with tents and other structures in the past, blocking passage for residents wishing to walk safely down the sidewalk. This is unacceptable activity in any of our public parks. The transfer provides an opportunity to better manage the park, especially given the cultural and historical significance of Thomas Square.

The Honorable Ron Menor
Chair and Presiding Officer
and Members
May 26, 2017
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DPR and DES entered into a Memorandum of Understanding (MOU) on May 19, 2016, to provide DES with limited authority to act on behalf of DPR regarding the joint control, maintenance and management of Thomas Square. At this time, Thomas Square is managed under the administrative rules of DPR. DES will establish its own rules and regulations for Thomas Square, and within this rulemaking process, the public will have an opportunity to comment. Once the DES rules for Thomas Square go into effect, the MOU will be cancelled and terminated upon mutual agreement of both departments.

It is my belief that the significance of Thomas Square must be elevated in the hearts and minds of the community. Many are unaware that Thomas Square is Hawaii's first public park, dedicated in 1850. Seven years earlier, in 1843, Rear Admiral Richard Thomas helped to restore the sovereignty of the Hawaiian Kingdom in a ceremony at this site; lowering the British flag and raising the Hawaii Kingdom flag, which eventually came to be our State flag of Hawaii. Thomas Square played a key role in the creation of our state motto, and was the original home of the Royal Hawaiian Band.

The City and County of Honolulu is working to restore Thomas Square by honoring its remarkable history, as well as significance to the people of the City and County of Honolulu, and the State of Hawaii, by updating the park to reflect the culture and arts district that surrounds it for our modern day residents.

For the reasons stated above, I am returning Bill 23 with my veto, and I respectfully urge you to sustain it.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kirk Caldwell', with a long, wavy horizontal line extending to the right.

Kirk Caldwell
Mayor

Attachment



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____
BILL 23 (2017)

A BILL FOR AN ORDINANCE

RELATING TO CITY PARKS AND RECREATIONAL FACILITIES.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to clarify the status of parks and recreational facilities under the ownership, management, or control of the City and County of Honolulu.

SECTION 2. Chapter 2, Article 13, Revised Ordinances of Honolulu 1990, as amended by Ordinance 16-29 ("Department of Enterprise Services"), is amended by adding a new Section 2-13.2 to read as follows:

"Sec. 2-13.2 Status of city parks and recreational facilities.

- (a) Except as provided in subsection (b), parks and recreational facilities, or any portion thereof, under the ownership, management, or control of the city shall not be deemed to be cultural or entertainment facilities subject to the jurisdiction of, or assignment to, the department of enterprise services.
- (b) Subsection (a) does not apply to the following:
- (1) The Honolulu Zoo;
 - (2) The Waikiki Shell complex; and
 - (3) Municipal golf courses."

SECTION 3. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the underscoring.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL 23 (2017)

A BILL FOR AN ORDINANCE

SECTION 4. This ordinance takes effect upon its approval.

INTRODUCED BY:

Paul K. Iwamoto
Carol Fukunaga

DATE OF INTRODUCTION:

FEB 16 2017

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20 _____.

KIRK CALDWELL, Mayor
City and County of Honolulu

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

ORDINANCE

BILL 23 (2017)

Introduced: 02/16/17

By: ERNEST MARTIN


Committee: PARKS, COMMUNITY AND
CUSTOMER SERVICES

Title: A BILL FOR AN ORDINANCE RELATING TO CITY PARKS AND RECREATIONAL FACILITIES.

Voting Legend: * = Aye w/Reservations

02/22/17	COUNCIL	BILL PASSED FIRST READING AND REFERRED TO COMMITTEE ON PARKS, COMMUNITY AND CUSTOMER SERVICES. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE.
03/07/17	PARKS, COMMUNITY AND CUSTOMER SERVICES	CR-77 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AND SCHEDULING OF A PUBLIC HEARING.
03/11/17	PUBLISH	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
03/22/17	COUNCIL/PUBLIC HEARING	CR-77 ADOPTED. BILL PASSED SECOND READING, PUBLIC HEARING CLOSED AND REFERRED TO COMMITTEE ON PARKS, COMMUNITY AND CUSTOMER SERVICES. 9 AYES: ANDERSON*, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE.
03/31/17	PUBLISH	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
05/02/17	PARKS, COMMUNITY AND CUSTOMER SERVICES	CR-158 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING.
05/10/17	COUNCIL	CR-158 ADOPTED AND BILL 23 (2017) PASSED THIRD READING. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.


GLEN I. TAKAHASHI, CITY CLERK


FOR MENOR, CHAIR AND PRESIDING OFFICER